

§ 4.1370

with the Board within 30 days of receipt of the decision or, in the alternative, may seek judicial review in accordance with 30 U.S.C. 1276(a)(2) (1982). A copy of the petition shall be served simultaneously on the Administrative Law Judge who issued the decision, who shall forthwith forward the record to the Board, and on all other parties to the proceeding.

(b) The petition shall set forth specifically the alleged errors in the decision, with supporting argument, and shall attach a copy of the decision.

(c) Any party may file a response to a petition for discretionary review within 20 days of receipt of the petition.

(d) The Board shall issue a decision denying the petition or granting the petition and deciding the merits within 60 days of the deadline for filing responses.

REVIEW OF DECISIONS OF THE OFFICE OF SURFACE MINING SUSPENDING OR RESCINDING IMPROVIDENTLY ISSUED PERMITS

SOURCE: 59 FR 54326, Oct. 28, 1994, unless otherwise noted.

§ 4.1370 Scope.

Sections 4.1370 through 4.1377 govern the procedures for review of notices from OSM of suspension of improvidently issued permits issued under 30 CFR 773.20(c) or of notices of proposed suspension and rescission of improvidently issued permits issued under 30 CFR 773.21.

§ 4.1371 Who may file, where to file, when to file.

(a) A permittee that is served with a notice of suspension under 30 CFR 773.20(c)(2) or a notice of proposed suspension and rescission under 30 CFR 773.21 may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Telephone 703-235-3800) within 30 days of service of the notice.

(b) Failure to file a request for review within 30 days of service of the notice shall constitute a waiver of review of

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the notice. An untimely request for review shall be dismissed.

(c) Where appropriate under the Administrative Dispute Resolution Act, 5 U.S.C. §§ 571-583, the Hearings Division may use a dispute resolution proceeding, if the parties agree to such proceeding, before the procedures set forth in §§ 4.1373 through 4.1377.

§ 4.1372 Contents of request for review, response to request, amendment of request.

(a) The request for review shall include:

(1) A copy of the notice of suspension or the notice of proposed suspension and rescission;

(2) Documentary proof, or, where appropriate, offers of proof, concerning the matters set forth in 30 CFR 773.20(b) or 773.21(a)(1) through (4) showing that the person requesting review is entitled to administrative relief;

(3) A statement whether the person requesting review wishes an evidentiary hearing or waives the opportunity for such a hearing;

(4) A request for specific relief; and

(5) Any other relevant information.

(b) Within 20 days of service of the request for review by the permittee in accordance with 43 CFR 4.1109, OSM and all interested parties shall file an answer to the request for review or a motion in response to the request or a statement that no answer or motion will be filed. OSM or any interested party may request an evidentiary hearing even if the person requesting review has waived the opportunity for such a hearing.

(c) The permittee may amend the request for review once as a matter of right before a response in accordance with paragraph (b) of this section is required to be filed. After the period for filing such a response, the permittee may file a motion for leave to amend the request for review with the administrative law judge. If the administrative law judge grants a motion for leave to amend, he shall provide OSM and any other party that filed a response in accordance with paragraph (b) not less than 10 days to file an amended response.